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NOT ADMITTED IN D.C.

November 20, 1995

By Hand Delivery

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

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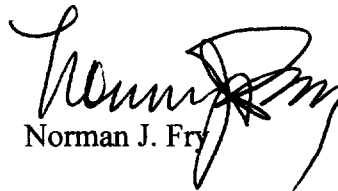
**Re: CC Docket No. 95-149; GTE Response to Metropolitan Washington
Airports Authority Motion for Expedited Consideration**

Dear Mr. Caton:

Enclosed please find an original and four copies of GTE's response to the Metropolitan Washington Airports Authority letter moving for expedited consideration which was filed November 2, 1995, in the above docket. Please date stamp the copy provided for that purpose and return it to the person delivering this filing.

Pursuant to the Commission's Rules of Practice and Procedure, 47 C.F.R. § 1.45(a), the date on which GTE's response would have been due was November 15, 1995. Due to the late shutdown of the federal government and pursuant to the Commission's Public Notice dated November 13, 1995, the due date for this filing was deferred until today, the first day that the Commission reopened for business thereafter.

Sincerely,


Norman J. Fry

Enclosure

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November 16, 1995

John S. Morabito, Esq.
Deputy Chief, Network Services Branch
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 95-149; Request for Declaratory Ruling

Dear Mr. Morabito:

GTE South Incorporated ("GTE"), by its attorneys, responds to the correspondence dated November 2, 1995 filed by the counsel for the Metropolitan Washington Airports Authority ("MWAA") in the above docket (the "MWAA November 2 letter").

GTE has no objection to expedited consideration of MWAA's Petition. As MWAA stated in its Reply to GTE's Opposition to the Request for Declaratory Ruling, "There is one--and only one--issue for the Commission to decide: whether the Authority is entitled to insist upon a single demarcation point at the minimum point of entry at building 8."¹ Prolonging that dispute is not in the interests of either GTE or MWAA. GTE continues to oppose grant of the declaratory order sought by MWAA to establish a single demarcation point for all telephone service at GTE's Dulles local exchange ("Dulles"). GTE's substantive arguments have been presented in earlier pleadings and will not be repeated.

The MWAA November 2 letter does not address the "one--and only one--issue" correctly identified by MWAA in its earlier pleading. Rather, MWAA has chosen to introduce dealings between MWAA and GTE that are, at most, tangential to that single issue. Those dealings concern the scope of work to be performed by GTE and by MWAA's contractor in the Main Terminal building at Dulles. There is absolutely no need for the Commission to divert its attention to that exchange between GTE and MWAA in resolving the single versus multiple demarcation point issue before it. However, because MWAA has chosen to lay this course of dealings before the Commission, GTE is compelled to respond.

¹ See Reply of Metropolitan Washington Airport [sic] Authority to Opposition of GTE South Incorporated 1 (CC Docket No. 95-149, undated).

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GTE does not accept MWAA's characterization of the recent exchange of correspondence between the parties to this proceeding. In fact, both MWAA's correspondence and GTE's correspondence could have been more carefully drafted; it appears that both parties misunderstand the desires and positions of the other. If MWAA or its contractor had chosen to seek further direct discussion with GTE on the work it wishes to pursue at the Main Terminal rather than choosing to use the exchange of written correspondence to further its litigation efforts at this Commission, the work at the Main Terminal would have progressed more smoothly by this time. In order more specifically to inform MWAA of GTE's position and to attempt to resolve these matters raised by MWAA's November 2, 1995 letter, GTE has sent the attached letter to MWAA.

There are several points to be made regarding MWAA's November 2, 1995 letter. First and most importantly, GTE has neither said nor done anything that would impede MWAA's franchisee, Harris Corporation, from constructing any telecommunications facilities whatsoever within the existing or expanded Main Terminal.

Second, it is important to characterize and analyze the specific design information that MWAA's franchisee, Harris, sought in its October 6, 1995 letter. Harris asked for three categories of information with regard to the Main Terminal building at Dulles: (1) inside wiring design data on the customer side of the demarcation for lines billed to MWAA; (2) inside wiring design data on the customer side of the demarcation for lines billed to third-party customers; and (3) network design data on the GTE side of the demarcation.

GTE's position with respect to inside wiring design data in the Main Terminal is simple: As stated in GTE's October 17, 1995 letter, if Harris provides customer authorization, GTE will perform the work or permit Harris to perform the work through its own technicians or contract technicians. GTE does not claim either ownership or proprietary rights with respect to design data for inside wiring on the customer side of the demarcation point. However, GTE's October 17, 1995 letter tersely recognizes that the Commission has repeatedly stated that inside wiring is controlled by the telephone company's customer.^{2/} See, e.g., Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Report and Order and Further Notice of Proposed Rule Making, 5 F.C.C. Rcd. 4686, 4687 (1990) ("Inside Wiring Order"). Because Harris is not GTE's customer with respect to these access lines, it therefore has no authority to order GTE to perform work on inside wiring owned by either MWAA or third-party customers within the Main Terminal. Although GTE agreed in principle to perform this identification work as a subcontractor for Harris, GTE properly requested that

^{2/} GTE concedes that its letter could have been drafted more clearly to make this point.

John S. Morabito, Esq.
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Harris provide written authorization both from MWAA and from third-party customers for Harris to do the work it desired GTE to accomplish.^{3/} In addition, given MWAA's contentions in its Commission filings in this proceeding that GTE had somehow endangered airport security and public safety by undertaking telephone work without specific MWAA written authorization,^{4/} it should not come as a surprise to MWAA that GTE would require Harris to provide such written permission. GTE acknowledges that MWAA's authorization on lines serving it is now in hand.

With respect to the third data item Harris seeks, network design data on the public network side of the demarcation in the Main Terminal, GTE's position is direct and straightforward--GTE's network design data is proprietary and GTE will not divulge such network design data unless specifically ordered to do so.^{5/} Moreover, GTE will not permit MWAA, Harris, or a subcontractor of either to examine these GTE public network facilities. This position is fully in accordance with the Commission's inside wiring rules. See Inside Wiring Order, 5 F.C.C. Rcd. at 4687.

The Commission should note that if MWAA or Harris successfully extracts public network design data in the Main Terminal from GTE, Harris's cost to engineer the proposed MWAA/Harris network will be drastically reduced, and those savings will accrue directly to the bottom lines of both entities. GTE has no objection to fair competition. However, neither federal nor state law requires GTE to disclose the result of years of engineering work to potential competitors in order to reduce their market entry costs. If MWAA and Harris

^{3/} It is important to note that many third-party customers inside the Main Terminal at Dulles have separate contracts with GTE to install and maintain the inside wiring serving their facilities. Given that GTE therefore knew with certainty that these customers own their inside wiring, it is therefore imperative for GTE to obtain permission from these customers before interfering with it. Because Harris is the entity desiring GTE to conduct this work, it (and not GTE) should be the entity required to obtain such permission. If Harris desires to pay GTE on a time-and-materials basis to approach third-party customers on its behalf to obtain such permission, GTE will be pleased to do so.

^{4/} See Metropolitan Washington Airports Authority Request for Declaratory Ruling 8 (CC Docket No. 95-149 Aug. 14, 1995).

^{5/} Under federal case law, the FCC would appear not to have authority to issue such an order. For the Commission to order GTE to divulge proprietary data (or for the Commission to collect such data and release it to Harris or MWAA) would constitute a constitutional taking, see Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1013 (1984), and the D.C. Circuit has held that the FCC has no inherent authority under the Communications Act to effect a taking unless the taking is absolutely necessary to achieve a valid Federal regulatory objective. Bell Atlantic Telephone Companies v. FCC, 24 F.3d 1441, 1446-47 (D.C. Cir. 1994).

John S. Morabito, Esq.
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desire to go into the telecommunications business, they should conduct market research^{6/} to determine the probable need for their services and then engineer a network to meet that need.

MWAA has not explained to the Commission why the network design data for GTE's existing public switched network is necessary for it to install its own network in the Main Terminal expansion. GTE has not, in writing or otherwise, raised any objection to MWAA installing any telecommunications facilities it pleases in the existing or expanded Main Terminal. GTE's unwillingness to divulge proprietary network design data cannot stop MWAA or Harris from engineering and installing a telecommunications system. Neither MWAA nor Harris has any legitimate need for GTE's network design data, either to support expansion of the Dulles Main Terminal or for any other purpose. On the other hand, GTE is fully prepared to assist MWAA with regard to information on "customer side" facilities in the Main Terminal and has reaffirmed its readiness in the attached letter from Ms. Thompson to Mr. Egan.

Sincerely,

A handwritten signature in dark ink, appearing to read "George A. Avery". The signature is fluid and cursive, with a large initial "G" and "A".

George A. Avery, Esq.
Michael A. Carvin, Esq.
Norman J. Fry, Esq.

Attorneys for GTE South Incorporated

cc: Ian D. Volner, Esq.
Naomi C. Klaus, Esq.

^{6/} Conducting such research within the Main Terminal should not be a problem for MWAA, because it surely knows which organizations rent space in the terminal.



**GTE Telephone Operations
South Area**

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804 779-4000

November 13, 1995

Mr. Michael Egan
Communications Manager
Metropolitan Washington Airport Authority
44 Canal Center Plaza
Alexandria, Virginia 22314-1562

Dear Mike:

I have had an opportunity to review the letter which MWAA's attorney sent to the FCC on November 2, 1995. I was particularly concerned about the sentence in which he states: "By GTE's assessment, the only premises wiring that is unregulated (and not part of the public network) is that which is inside a building and serving the stations of the landlord." This is not a correct understanding of my letters of October 17 and 31, 1995, which he attached to his submission to the FCC. I think I should go over once again the information I was undertaking to convey in those letters.

First, I should note that, in my October 17 letter, I was responding to the October 6 letter from Airport Communications Systems ("Harris") and taking into account a telephone conversation I had had with Mr. Van Sickle (who had signed Mr. Mannings's October 6 letter). Through that conversation, I understood that Harris, on MWAA's behalf, wanted GTE to do three things involving demarcation in the Main Terminal: (1) Provide services to identify facilities located on the customer side thereof in the Main Terminal which serve MWAA; (2) Provide services to identify facilities located on the customer side thereof in the Main Terminal which serve customers other than MWAA; and (3) Provide services to identify facilities located on GTE's side thereof in the Main Terminal, including public network facilities in the Main Terminal which extend back to the GTE central office. I was informed that the design work being done on MWAA's behalf involved redesign of facilities on the customer side of demarcation in the Main Terminal so that such facilities would terminate at Harris's central office in Building 8.

In my October 17 letter, I undertook to address each of the three categories listed above. With regard to the first category, I undertook to say that GTE could proceed with work to identify

Mr. Michael Egan

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"customer side" facilities serving MWAA ("GTE can assist in identifying the number of pairs leaving the demarcation point and going to a customer's location in the existing terminal for the MWAA billable accounts."). With regard to the second category, I undertook to say that GTE could proceed with work to identify "customer side" facilities serving customers other than MWAA only after MWAA had provided GTE with such customers' Letters of Authorization for such work. ("However, you have not provided us a Letter of Authorization from MWAA to perform work on their behalf. Other customers accounts are proprietary.") I can see in hindsight that this statement would have been clearer if I had reversed the order of those two sentences. With regard to the third category, I undertook to say that GTE would not perform work for MWAA on facilities located on GTE's side of the demarcation in the Main Terminal. ("The size and gauge of cable facilities running from the customers' demarcation points to the GTE central office are not available for disclosure.")

It was not my intention to say, nor do I believe I said, as your counsel has suggested in the sentence I quoted above, that the only wiring in the Main Terminal that is not part of the public network is wiring which serves the stations of MWAA. We well understand that "customer side" facilities in the Main Terminal are beyond the public network. With proper authorization from customers, i.e., from MWAA for facilities which serve its stations, and from other customers for facilities which serve those customers, we are prepared to perform work on them sought by MWAA.

Turning from these past communications to which your counsel referred in his November 2 letter to the FCC to more recent communications, on November 7, Mr. Bob Beckwith, your contractor, raised the subject of relocating the telephone cable vault in the Main Terminal, now located in the 252 Room there. He requested GTE's schedule for that relocation. This was the first request or update in several years on MWAA's schedule for this relocation. GTE will certainly take that action. To move that effort along, I would like to offer a few general observations concerning GTE's perception of the process involved.

GTE clearly understands that MWAA, with Harris, is building its own facilities in the Main Terminal. Contrary to the statements in your counsel's November 2 letter to the FCC, GTE has no intent to halt or interfere with those efforts by MWAA. MWAA need only design and build its own facilities. To do so, it does not need engineering/design data concerning public network facilities. Specifically, for instance, the size and gauge of GTE's feeder cable to the Main Terminal should have nothing to do with how you design your facilities. Once you have your design, GTE only needs to know what services will be required of GTE to serve the Main Terminal. GTE can then ensure that the public network will be able to meet those service requirements.

Specifically with regard to the schedule for moving the telephone cable vault now located in the 252 Room of the Main Terminal, MWAA need simply supply GTE with the following

Mr. Michael Egan

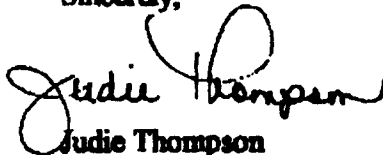
Page 3

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information: (1) written, detailed request to perform the work or a purchase order, (2) updated site plan, (3) size of the East Terminal Room, and (4) East Terminal Room completion date. We can then determine what we need to do to relocate our facilities to the East Terminal Room and we can provide the schedule for doing so. This flow of information from the customer to us about the customer's facilities and needs is necessary to determine the public network facilities required and schedule work on locating our cable vault. This is the normal manner of proceeding in circumstances like this.

To expedite the process and improve communication between us and to ensure that GTE meets your critical dates, I strongly urge that we schedule a meeting or telephone conference among all the necessary players. We believe this will make sure that the vault moving process goes smoothly.

Sincerely,



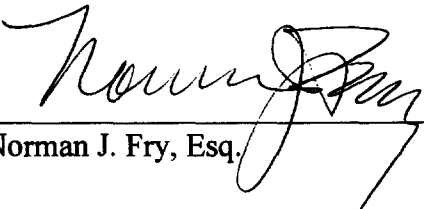
Judie Thompson
Sr. Administrator

CERTIFICATE OF SERVICE

I, Norman J. Fry, Esq., do hereby certify that a true and correct copy of the foregoing document was sent by first-class mail, postage prepaid, on this 20th day of November, 1995, to the following persons:

Naomi C. Klaus, Esq.
Assistant Legal Counsel
Metropolitan Washington Airports Authority
44 Canal Center Plaza Suite 218
Alexandria, VA 22314

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Counsel for Metropolitan Washington Airports Authority



Norman J. Fry, Esq.